by the same railroad the two classes of transportation are not independent in point of movement and safety, but are interdependent, for whatever brings delay or disaster to one or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains.

In *B. & O. RR.* v. *Int. Com. Com.*, 221 U. S. 612, an injunction was asked requiring defendant to make monthly reports showing overtime worked by its employes subject to the Act of Congress regulating hours of labor. The Act by its terms applied only to carriers and employees engaged in interstate transportation. It was argued by defendant that interstate and intrastate operations of interstate carriers were so interwoven that it was impracticable to divide their employees in such manner that the duties of those engaged in interstate commerce only, would be affected and that many employees were engaged in both classes of transportation. This court held that Congress had the power to limit hours of labor of employees engaged in interstate transportation and that this power could not be defeated because of the duties of some of the employees related to both interstate and intrastate operations.

In *Texas & Pacific Ry. Co.* v. *Rigsby*, 241 U. S. 33, plaintiff sued defendant railroad company to recover damages sustained by reason of defective appliances in violation of the Federal Safety Appliance Act. At the time the employee was enjured he was not engaged in interstate commerce. The question involved was whether it was beyond the power of Congress under the commerce clause of the Constitution by the passage of the Safety Appliance Act to create a liability in favor of one not employed in interstate commerce. This court held at page 42 of the opinion that "the right of private action by an employee injured while engaged in duties unconnected with interstate commerce,

but injured through a defect in a safety appliance required by the Act of Congress to be made secure, has so intimate a relation to the operation of the Act as a regulation of commerce between the States that it is within the constitutional grant of authority over that subject."

In *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, the question arose as to whether the National Labor Relations Board had a right to enjoin unfair labor practices under the National Labor Relations Act where the employer involved was not himself engaged in interstate commerce. This court held the employer was subject to the act and pointed out that it has been frequently held by this court that the power of Congress extends to the protection of interstate commerce from interference or injury to activities which are wholly intrastate.

In *Kirschbaum* v. *Walling*, 316 U. S. 517, decided by this court on June 1, 1942, the question arose under the Fair Labor Standards Act of 1938, as to whether an employer could be required to pay minimum wages on the ground that his employees were engaged in interstate commerce. A section of the Federal Act involved provided that for the purposes of the act an employee should have been deemed to have been engaged in interstate commerce if such employee was employed in any process or occupation necessary to the production thereof in any state. The employees in question were engaged in the operation and maintenance of a loft building which was rented by the owner to tenants who produce goods for interstate commerce. It was held that the Fair Labor Standards Act extended to such employees because they were engaged in interstate commerce. This court pointed out that the expansion of our industrial economy has inevitably been reflected in the extension of federal authority previously possessed by the states; that in the past Congress has frequently chosen to regulate

only part of what it constitutionally might regulate, leaving to the states activities which, if isolated, were only local; and that the history of Congressional control over various phases of interstate commerce has been continuously extended. Various examples of such extension are given in the opinion, and one of such examples of extension of federal control is the amendment of August 11, 1939, to the Federal Employers' Liability Act, extending the scope of that act to employees any part of whose duties shall in any way directly or closely and substantially affect interstate commerce.

In *U. S.* v. *Wrightwood Dairy Co.*, 315 U. S. 110, at p. 119, this court said:

> "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. * * * The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its fullest extent, and acknowledges no limitations other than are prescribed by the Constitution."

In *Wickard* v. *Filburn*, ... U. S. ...., 87 L. Ed. (Adv. Opn.) 57, decided by this court on November 9, 1942, this court said:

> "But even if appellant's activity be local and though it may not be regarded as commerce it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this is irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.' "

On the reasoning contained in the foregoing authorities Congress competently may say that where an employee is engaged in both interstate and intrastate transportation his injury or death in a purely intrastate transaction affects interstate commerce. The close relationship of interstate and intrastate commerce was discussed by this court in the *Second Employers' Liability Cases,* 223 U. S. 1. On page 48 of the opinion in that case, this court said:

> "As is well said in the brief prepared by the late Solicitor General: 'Interstate commerce—if not always, at any rate when the commerce is transportation —is an act. Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly, or unsafe or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act.' "

II.

The courts should not by a strained construction override the clear intent of a statute, but should rather decide questions in accordance with the views expressed by Congress.

The language of the August 11, 1939, amendment clearly and explicitly provides that the Federal Employers' Liability Act shall be applicable to any employee of a carrier any part of whose duties shall be in furtherance of interstate commerce, or shall in any way directly or closely and substantially affect such commerce. (Amendment set forth on page 3 of petition above.)

That there can be no doubt about the intent of Congress in passing the amendment is shown by the report of the Committee on the Judiciary of the United States Senate, 76th Congress, 1st Session (Committee Report No. 661, upon S. 1708), which states the following:

> "This amendment is intended to broaden the scope of the Employers' Liability Act so as to include within its provisions employees of common carriers who, while ordinarily engaged in the transportation of interstate commerce, may be, at the time of injury, temporarily divorced therefrom and engaged in intrastate operations.
>
> The question whether an employee, at the time of his injury, is engaged in interstate or intrastate commerce is frequently difficult of determination. Under the rule laid down by the Supreme Court of the United States, an employee of a railroad company who may be injured must be found to have been engaged, at the time of the infliction of the injury 'in transportation or work so closely related to it as to be practically a part of it' (*Shanks* v. *D. L. & W. R. R.*, 239 U. S. 556).
>
> In order to prove interstate transportation, if the question is at all obscure, it is necessary to procure the records of the carrier to show that the train, or the car

upon which the employee was working, at the time of the injury, contained some commodity, which was being transported in interstate commerce, or, if the car be empty, it is necessary to prove by the records of the company that the car was then enroute in an interstate movement.

As a result of the uncertainty which exists in border-line cases, there have been many instances in which suits were commenced and prosecuted to final determination only to develop the fact that the claimant had chosen the wrong remedy, or sued in the wrong court, and during the acquirement of this information the statute of limitations ran against the claimant under the law applicable to the case and no recovery could be had. * * *

The adoption of the proposed amendment will, to a very large extent, eliminate the necessity of determining whether an employee, at the very instant of his injury or death, was actually engaged in the movement of interstate traffic. If any part of the employee's duties (at the time of his injury or death) directly, closely, or substantially affected interstate or foreign commerce, the claimant would be considered entitled to the benefits of the act.

The preponderance of service performed by railroad transportation employees is in interstate commerce. As to those who are constantly shifting from one class of service to another, the adoption of the amendment will provide uniform treatment in the event of injury or death while so employed."

In spite of the clear wording of the act and of the Senate Committee Report, the Supreme Court of Illinois in this case has completely vitiated the amendment by a strained construction of its language. The interpretation given the amendment by the Supreme Court of Illinois is found in the following language in the opinion (R. 60):

"* * * the amendment in so far as it attempts to include the employees of interstate carriers at all times, regardless of whether or not their immediate employment is in interstate commerce or affects such commerce, is beyond the powers of Congress. On the other hand, the provisions of the 1939 amendment which broaden the application of the act to include those employees whose employment 'in any way directly or closely and substantially' affects interstate commerce, are within the powers of Congress and constitute a valid enactment.

Viewed from this basis, the only effect of the 1939 amendment is to change the test which must be applied to determine whether or not the Federal Employers' Liability act is applicable. Prior to that amendment, the test has been whether the employee, *at the time of accident,* was engaged in interstate commerce, or in work so closely related to it as to become a part of it. (*Thomson* v. *Industrial Com.*, 372 Ill. 258). Under the amendment, the test must be whether the activity in which the employee is engaged *at the time of the accident,* directly or closely and substantially affects interstate commerce." (Italics ours.)

The Supreme Court of Illinois thus says that both before and after the amendment of August 11, 1939, the only time to be considered is the time of the accident; that before the amendment the question was whether the employee's work was interstate "or so closely related to interstate commerce as to become a part of it;" but that after the amendment the question is whether the employee's work "directly or closely and substantially affects interstate commerce" (R. 60). Such an interpretation of the 1939 amendment means that absolutely nothing was accomplished by the enactment of the law.

It is too well settled to require citation of authority that the provisions of a statute must be given effect and up-

held by the courts, unless they are shown to be plainly, manifestly and unequivocally in conflict with some constitutional provision. No such showing appears here.

III.

To sustain the purpose of the 1939 amendment, no previous decision of this court will have to be overruled.

The Supreme Court of Illinois in this case has held that the plain meaning of the 1939 amendment cannot be given effect without overruling *Howard* v. *Ill. Cent. R. Co.*, 207 U. S. 463, and *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. This is not true. Six years after the decision in the *Howard* case, in *Illinois Cent. Ry.* v. *Behrens*, 233 U. S. 473, 477, this court held

> "* * * that the liability of the carrier for injuries suffered by a member of a crew in the course of its general work was subject to regulation of Congress, whether the particular service being performed at the time of the injury, isolatedly considered, was in interstate or intrastate commerce."

In commenting on the *Howard* case, on page 477 of the *Behrens* opinion, this court stated that the basis of the *Howard* case decision was that the Employers' Liability Act there pronounced invalid "attempted to regulate the liability of every carrier in interstate commerce, whether by railroad or otherwise, for any injury to any employee, even though his employment had no connection whatever with interstate commerce."

Even had the *Howard* case announced a limitation on the power of Congress over commerce that decision should not now bind this court. The source of the power of Congress over commerce is to be found in the language of the Constitution and not in the language of what the court may have said about the Constitution. As said by Mr. Justice

Frankfurter in his concurring opinion in *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, at page 491, wherein this court overruled previous decisions sustaining the immunity from Federal income tax of salaries received by state officers:

> "The judicial history of this doctrine of immunity is a striking illustration of an occasional tendency to encrust unwarranted interpretations upon the Constitution and thereafter to consider merely what has been judicially said about the Constitution, rather than to be primarily controlled by a fair conception of the Constitution. Judicial exegesis is unavoidable with reference to an organic act like our Constitution, drawn in many particulars with purposed vagueness so as to leave room for the unfolding future. But the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."

The *Jones-Laughlin* case also cited by the Supreme Court of Illinois as authority against sustaining the 1939 amendment is actually in support of its validity. In that case this court recognized the distinction between interstate commerce and intrastate commerce, but in upholding the National Labor Relations Act, on page 37 of the opinion, said:

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control."

IV.

The 1939 amendment is clearly applicable to the case at bar.

In *Kinzell* v. *C. M. & St. P. Ry. Co.*, 250 U. S. 130, this court adopted the following test to determine what kind

of a duty is sufficient to bring an employee under the Federal Employers' Liability Act:

> "Was its performance a matter of indifference so far as that commerce (interstate) was concerned, or was it in the nature of a duty resting upon the carrier?"

Certainly it cannot be said that respondent's duties of guarding interstate shipments, looking for hot boxes on interstate trains, watching for broken rails used by interstate trains, and checking and resealing interstate cars which had been broken into were matters of indifference to interstate commerce.

In *Pecos & Northern Ry. Co.* v. *Rosenbloom,* 240 U. S. 439, this court held that an employee was under the Federal Employers' Liability Act where his duties were to preserve a record of the numbers of outgoing freight cars and to seal those which needed it, where a portion of such cars were in intrastate commerce and the balance were in interstate commerce.

In the case of *Missouri Pacific R. R.* v. *David,* 284 U. S. 460, an employee was engaged in guarding interstate freight shipments from robbery and theft, and met his death while so engaged. The suit was under the Federal Employers' Liability Act. That it was correctly brought under the Federal Act was not questioned and the case was considered and determined in this court upon the merits with the conclusion that no recovery could be had by reason of the doctrine of assumption of risk. As to whether the work which the employee was doing was related to interstate commerce and therefore within the Federal statute was, of course, at the threshold of the case and its consideration upon the merits is sufficient to disclose that this court merely and as a matter of course assumed that it was so related.

In *Philadelphia and Reading R. Co.* v. *DiDonato,* 256 U. S. 327, this court held that a watchman employed by a carrier at a crossing over which both interstate and intrastate trains passed was in interstate commerce, although the train by which he was struck was intrastate. The basis of the decision was that,

> "The service of a flagman concerns the safety of both commerces and to separate his duties by moments of time or particular incidents of its exertion would be to destroy its unity and commit it to confusing controversies."

In *Wheelock* v. *Industrial Com.,* 318 Ill. 537, it was held that a police sergeant employed by a railroad to watch shipments of freight out of certain cities riding whatever trains he was advised by his superior officers to ride for a certain distance out of the city was in interstate commerce where it was his duty to guard the freight, regardless of whether interstate or intrastate destination. The fact that when injured he was guarding an intrastate shipment did not remove him from the Federal Employers' Liability Act. The court said:

> "It is the employment that determines whether or not the injury to the employee is within the purview of the act and not necessarily the particular act of the employee at the precise time of his injury."

V.

All other decisions on the subject since the 1939 amendment have given effect to its obvious purpose. To secure uniform application of the act this court should pass on this case.

In *Southern Pacific* v. *Industrial Acc. Com.,* 120 Pac. (2d) 880 (Cal.), the constitutionality of the 1939 amendment to the Federal Employers' Liability Act was sustained. At page 885 that court said:

"* * * the respondent contends the amendment as so construed covers in part intrastate business, a subject over which the Congress has no jurisdiction. The point is not well taken. If and when interstate business is clearly a part of the subject to be legislated on, the fact that intrastate commerce may be interwoven therewith does not prevent the Congress from exercising its powers." (Citing authorities.)

In *Louisville & Nashville R. R. Co.* v. *Plotts*, 158 S. W. (2d) 729 (Tenn.), the Court gave effect to the 1939 amendment to the Federal Employers' Liability Act. There, a fireman on a switch engine was injured when the engine was moving cars in intrastate transportation. The ordinary duties of the train crew of which the injured man was a member were the general switching of cars in both interstate and intrastate shipments. The court said (p. 730):

"The amendment of August 11, 1939, evidences a legislative intent of the congress to extend the Federal Employers' Liability Act to all railroad employees whose duties pertain to the furtherance of interstate or foreign commerce, or which in any way directly or closely and substantially affect such commerce. Prior to the amendment, it was often a matter of difficulty for an injured employee to know, and for the courts to ascertain, whether or not at the time of the accident he was engaged in interstate commerce. One moment the employee might be engaged in an interstate movement, and the next moment in an intrastate movement."

In *Piggue* v. *Baldwin*, 121 Pac. (2d) 183 (Kansas), the employee at the time he was killed had the general duty of cleaning cinders, papers and debris from the tracks of the respondent railroad company. At the moment of his death he was removing a pile of cinders from respondent's receiving track. The court said (p. 186):

"Under the amendment to the Federal Employers' Liability Act any employee of a carrier, any part of whose duties shall be the furtherance of interstate commerce, or shall in any way directly or closely and substantially affect such commerce, is considered as employed by such carrier in interstate commerce and is entitled to the benefits of the Act. Clearly claimant's husband was covered by the provisions of the Federal Employers' Liability Act as amended."

In *Ermin* v. *Pa. R. R. Co.*, 36 Fed. Supp. 936 (D. C., N. Y.), at page 940, the court said:

"There are multitudinous decisions raising hair-splitting interpretations as to whether or not the employe at the time of his accident was actually engaged in interstate commerce. It was to avoid this difficulty that Congress enacted the amendment. It was, undoubtedly, the intent of Congress to include within the scope of the Federal Employers' Liability Act all employees, even those performing intrastate services whose employment meets the requirements of the Act. It is no longer subject to doubt that Congress had the power to include intrastate employment, which affects interstate commerce, within the scope of the Federal Employers' Liability Act. (Citing authorities.)

The Court should not by a strained construction override the intent of the Congress but should rather decide questions in accordance with the views expressed by the Congress. Here the Congress was trying to remedy a fault, it was enacting legislation which would not require a railroad employee to draw a hairline to determine whether or not at the moment of the accident he was actually engaged in interstate commerce. The Congress was correcting an evil which existed which prevented railroad employees from receiving a just determination of their rights."

In *Wright* v. *New York Central R. R. Co.* 33 N. Y. Supp. (2d) 531, the court said:

"Previous to August 11, 1939, the nature of the work in which an interstate carrier's employee was engaged at the time of his injury or death determined whether the Federal Employers' Liability Act, 45 U.S.C.A. §51 *et seq.*, applied and he was entitled to its benefits. *Shanks* v. *Delaware, L. & W. R. R.*, 239 U. S. 556, 36 S. Ct. 188, 60 L. Ed. 436, L.R.A. 1916C, 797. And there were many borderline decisions under the rule. A case would turn upon some slight differentiation in duty or operation, more apparent than real. There was much hair splitting and little certainty. It was to avoid all this and to give a fixity of application that Congress amended this act on August 11, 1939, to include 'any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce.' "

From the foregoing, it is apparent that there is a square conflict of authority on the effect of the 1939 amendment, the Supreme Court of Illinois refusing to recognize it and all other jurisdictions upholding it.

Although not a matter of record in this case, the court should, we think, take judicial notice of the fact that the State boards charged with the duty of administering local compensation acts are being constantly called upon to decide whether injured railroad employees come within the Employers' Liability Act, and that attorneys for injured employees as well as railroad law and claim departments are daily called upon to decide the same question. Uniformity as to the interpretation, applicability and constitutionality of the Amendment of 1939 is urgently necessary. Without it an utterly deplorable situation exists. No better illustration can be found than in the situation in the case at bar. The railroad here involved operates in nine States, all but one of which have Workmen's Compensation Acts administered by State boards. Unless this court passes on the effect of the amendment, the rights of injured employees

of petitioner will depend on which side of a State line an accident occurred and not on the provisions of the Federal Act.

In *N. Y. C. R. R.* v. *Winfield*, 244 U. S. 147, it was held that where state court decisions under the Federal Employers' Liability Act are conflicting, the Supreme Court of the United States should decide the matter so that there may be uniformity. In the *Winfield* case this court granted a review of the decision of the Supreme Court, Appellate Division of the State of New York, allowing an award under the Workmen's Compensation Act. This court pointed out that the state courts' decisions on the point were conflicting, New York and the New Jersey state courts holding one way, and the California Appellate Court and the Illinois Supreme Court holding the opposite. This court said, at page 149 of the opinion:

> "Whether and in what circumstances railroad companies engaging in interstate commerce shall be required to compensate their employees in such commerce for injuries sustained therein are matters in which the Nation as a whole is interested and there are weighty considerations why the controlling law should be uniform and not change at every state line. *Baltimore & Ohio R. R.* v. *Baugh*, 149 U. S. 368, 378-379."

VI.

Even without the 1939 amendment respondent was governed by the Federal Employers' Liability Act.

Roberts, Federal Liabilities of Carriers Section 754, states:

> "The actual policing of trains, to the end that passengers shall not be molested or property in transit damaged or stolen, was and still is a function of the trainmen, and a part of the act of carriage. It is none

the less so when the multiplication of a carrier's responsibilities induces it to supplement this watchfulness of the train crew by placing on trains and in yards men whose sole duty it is to discharge this police duty. Hence, men so employed are definitely participating in the movement of traffic, and if such traffic is interstate in character, they are under the Federal Employers' Liability Act. The same is true as to a watchman guarding an interstate car or a car containing interstate shipments standing in the yards awaiting further movement, or one guarding interstate shipments which are awaiting loading or are being held, after unloading, for delivery to the consignee."

Even before the 1939 amendment it was well established that a service being rendered by an employe at the time of his injury might have a double aspect toward commerce. As in the case of *Erie* v. *Winfield,* 244 U. S. 170, the service may clearly be a service in interstate commerce, yet at the same time it may be in furtherance of local commerce or of purposes not directly related to commerce of any sort. In the *Winfield* case the employee was killed leaving the carrier's yards at the close of the day's work. This court held that like the employee's trip through the yards to the engine in the morning, his return trip was a necessary incident of his day's work and partook of the character of the day's work as a whole, and that it was no more an incident of one part than of another; that since his day's work was in both interstate and intrastate commerce, when the employee was leaving the yards at the time of his injury, his employment was in both; and that Federal law being paramount, he was under the Federal Employers' Liability Statute.

In *Erie* v. *Welsh,* 242 U. S. 303, a yard conductor was injured at a time when the specific act he was doing was devoid of any character as to commerce. It was there held that the proper test was whether the series of acts last per-

formed was properly to be regarded as a succession of separate tasks or as a single and indivisible task.

In *Nor. Car. R. R. Co.* v. *Zachary*, 232 U. S. 248, this court held that although absent temporarily from his train for a purpose not inconsistent with his duty to his employer, a railroad employee was still engaged in interstate commerce within the meaning of the Employers' Liability Act. This case was cited with approval and followed in *N. Y. C. R. R. Co.* v. *Marcone*, 281 U. S. 345, 350. To the same effect is *Rader* v. *B. & O. R. Co.*, 108 Fed. (2d) 980 (C. C. A. 7th).

The following state court decisions hold that employees acting as policemen, watchmen or inspectors at yards where interstate commerce is being carried on are in interstate commerce:

Policemen.

MacLemale v. *N. Y. C. R. R. Co.*, 300 N. Y. S. 68.
Cullen v. *Erie R. Co.*, 267 N. Y. S. 837.
Elder v. *Penn. R. Co.*, 180 Atl. 183 (Pa. Supr.).
Nichols v. *St. L. & S. F. R. Co.*, 151 So. 347 (Ala.).
Bordelon v. *New Orleans Term.*, 129 So. 452 (La.).

Watchmen.

Cork v. *Lehigh Valley R. Co.*, 119 Atl. 88 (N. J.).
Fitzgerald v. *Gt. Northern Ry. Co.*, 196 N. W. 657 (Minn.).
A. T. & S. F. Ry. Co. v. *Ind. Acc. Com.*, 220 Pac. 342 (Cal.).
Smith v. *Ind. Acc. Com.*, 147 Pac. 600 (Cal. A.).
Dade v. *N. Y. C. R. Co.*, 206 N. Y. S. 519.

Inspectors.

Anest v. *Columbia & P. S. Co.*, 154 Pac. 1100 (Wash.).
Mulcahy v. *Terminal R. R.*, 123 S. W. (2d) 235 (Mo.).
Jordan v. *Erie R. R.*, 22 Atl. (2d) 116 (Pa. Supr.).
Jennings v. *Pittsburgh & L. E. R. Co.*, 7 Atl. (2d) 96 (Pa. Supr.).

CONCLUSION.

What was said in *Phila. & Reading Co.* v. *DiDonato*, 256 U. S. 327, in discussing the question of whether or not particular acts of an employee brought him under the Federal Employers' Liability Act is here applicable. On page 331 of that opinion this court said:

> "Therefore, whether they be of state or congressional power, there is an equal necessity for their accurate delimitation. This case, therefore, has importance beyond the interest of the parties to it. Its principle and example, reinforcing the *Pederson Case* and the cases based upon it, make a test by which future cases may be assigned to intrastate or interstate commerce and mark the power and policies that may be necessary or convenient to either."

We respectfully submit that whether or not the 1939 amendment shall be given effect is a matter of vital importance to the public. This question should now be authoritatively decided by this court so that uniform effect may be given to the act by the various courts throughout the United States.

Respectfully submitted,

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